

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of
Advanced Methods to Target and Eliminate
Unlawful Robocalls

)
)
)
)
)

CG Docket No. 17-59

COMMENTS OF NOBLE SYSTEMS CORPORATION

**REGARDING THE PACE PETITION FOR RECONSIDERATION
MODIFYING THE COMMISSION'S ORDER REGARDING REASSIGNED NUMBER
DATABASE**

Filed May 21, 2019

Karl Koster
Chief Intellectual and Regulatory Counsel
Noble Systems Corporation
1200 Ashwood Parkway
Atlanta, GA 30338

I. Summary

Noble Systems, a provider of contact center software and cloud-based service solutions, submits these comments in response to the petition for reconsideration (“petition”) filed by the Professional Association for Customer Engagement (“PACE”) on April 25, 2019. The petition proposes modifications to the Commission’s recent Final Report and Order on Advanced Methods to Target and Eliminate Unlawful Robocalls (“Order”) creating a comprehensive reassigned numbers database (“RND”).¹

The modifications proposed by PACE are directed to: 1) eliminating the requirement to include business and toll free numbers in the RND, and 2) modification of the safe harbor language. For the reasons indication below, Noble Systems supports these proposed modifications.

II. Business and Toll Free Numbers Are Not Required For Inclusion in the RND

There are compelling reasons why business and toll free numbers should not be included in the RND. The Commission’s Order states “that unwanted calls to reassigned numbers are a significant problem for callers and consumers” and that “concern about calling reassigned numbers has caused some callers to stop making calls.”² However, it is clear that the concern of calling reassigned numbers relates to calling wireless or residential wireline numbers, not business and toll free numbers (“TFNs”).

The Commission’s record and prior comments directed to unwanted robocalls is largely void of any evidence that owners of business numbers or toll free numbers have complained about receiving unwanted calls to reassigned business numbers or reassigned toll free numbers. The record and comments regarding unwanted calls to reassigned numbers largely concerns individual consumers of residential wireline or wireless numbers complaining of unwanted calls intended for another individual, not that of businesses complaining of receiving calls intended to another business.

If business numbers and TFNs are maintained in the RND, it is unreasonable to expect that consumers dialing a business or TFN number would go to the time and expense of first querying

¹ Second Report and Order, *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, FCC 17-151 (Released Dec. 12, 2018; Pub. in Fed. Reg. Mar. 26, 2019).

² Order, paragraph 6.

the RND before dialing the number. That simply will not happen to any degree, so any anticipated benefit that relies on consumers querying the RND is essentially non-existent. With respect to businesses querying the RND when calling a business or TFN, it is difficult to imagine why a businesses would query the RND database prior to calling to a business number or TFN. In most cases, there is no potential TCPA liability for calling a landline business number or TFN, and hence no motivation to query the RND. Businesses are largely concerned with calling an individual's wireless number.

The purported motivation for including these numbers is that “the reassigned numbers database needs to be as comprehensive as possible so that consumers are not left vulnerable.”³ First, consumers are not left vulnerable of receiving calls to reassigned business numbers and reassigned toll free numbers, because consumers are usually not receiving reassigned business numbers or toll free numbers.⁴ So, this reasoning that consumers need to be protected is questionable as a motivation to include business or TFNs in the RND.

The Commission also cites in the Order (paragraph 22 and footnote 61) that various commentators indicated the need for comprehensiveness and accuracy in the RND as a reason for including such numbers. Indeed, the Commission even cites one commentator (National Council of Higher Education Resources, “NCHER”) as supporting this issue in footnote 61. The Commission further incorrectly alleged that ATIS was the only commentator raising this issue. However, this is not true as NCHER stated “Reassignment of toll-free numbers would be unnecessary, as consumers generally do not have such numbers.”⁵ Thus, other entities realize that it is not necessary to include TFNs in the RND.

Further, the Commission has ignored other comments reflecting an understanding that the reassigned numbers in the RND are limited to consumer (i.e., individual) numbers, not business or toll free numbers. Some of these comments reflecting this understanding are shown below:⁶

³ Order, par. 22.

⁴ It is acknowledged that in rare instances that a consumer may receive a reassigned business telephone number, but typically this pertains to wireline instances. Further, even so, other consumers calling that obsolete business telephone number would not be expected to first query the RND before making the call, so even the existence of the RND would not alleviate problems associated with that specific fact pattern.

⁵ Comments of National Council of Higher Education Resources, CG Docket No. 17-59, August 28, 2017, page 4.

⁶ These are comments to FCC 17-90, Second Notice of Inquiry on Reassigned Numbers, CG Docket 17-59.

- Tatango: “Businesses sending text messages to consumers will also benefit, as they’ll have a reliable method to ensure that they only sent text messages to **consumers** that have consented to receive them, reducing the likelihood of litigation.” (Tatango comments, page 9, emphasis added.)
- NCTA: “Ultimately, if properly constructed, the potential benefits of a comprehensive reassigned numbers mechanism are threefold: it could minimize or **eliminate robocalls to consumers** with reassigned numbers, it could avoid depriving **consumers** of calls that they wish to receive; and as part of a broader comprehensive and integrated examination of the interrelated issues of numbering administration, it could mitigate costly and counterproductive liability under the TCPA for entities that inadvertently placed calls to reassigned numbers.” (NCTA comments, pages 5-6, emphasis added.)
- Anthem: “The primary benefit to **consumers** is that **consumers** with reassigned numbers will not receive unwanted or irrelevant calls intended to a prior holder of the number. The primary benefit to businesses is reducing the risk of severe financial exposure when **customers** change phone numbers without a company’s knowledge.” (Anthem comments, page 1-2, emphasis added.)
- Insights Association: “Absent broader reform of the TCPA, a comprehensive database of **reassigned cell phone numbers** is necessary in order to facilitate TCPA compliance and help Insights Association members avoid the growing rash of unnecessary multi-million dollar calls action lawsuits.” (Insights Association comments, page 3, emphasis added.)
- National Retail Federation: “Businesses that wish to call **customers** should not be forced to engage in a ‘wild goose chase’ to identify the specific VSP for each **customer** number for which they have consent, or to contract with all possible VSPs to receive comprehensive reassigned number information.” (NRF comments, p. 15, emphasis added.)
- Retail Industry Leaders Association: “If the purpose of the database is to be a repository of all reassigned numbers, then every entity that uses and resuses numbering resources to serve end user **consumers** should participate.” (RILA comments, page 13, emphasis added.)
- Student Loan Servicing Alliance (“SLSA”): “SLSA members thus would welcome a robust, comprehensive and accurate database of reassigned numbers that would allow them to scrub their **borrower’s** numbers.” (SLSA comments, p. 5, emphasis added.)

Thus, many of the commentators supporting a comprehensive database reference “consumers with reassigned numbers”, “cell phone numbers”, “customer number”, or “borrower’s numbers” which implicitly references an individual’s number. They are not referencing situations where business or toll free numbers are being called. Thus, comments reflecting that all voice service providers should be required to report reassigned numbers should be interpreted as all consumer numbers should be reported by wireline, VoIP, and wireless providers.

Finally, as noted by PACE in their comments on page 9, it will be challenging to create an accurate database of business and toll free numbers. Hosted service providers and contact center operators, which are not “reporting carriers,” may have knowledge of the current use of a business number, and without imposing additional reporting requirements on these entities, the RND may not accurately inform its users of the current status of a business number.

III. Safe Harbor Language Requires Modification

Noble Systems encourages the Commission to modify the safe harbor language as recommended by PACE to bring consistency to the Order. The motivation of users to query the RND is to obtain a safe harbor from TCPA liability. If the requirements necessary to obtain the benefit of the safe harbor are onerous, this will discourage use of the RND.

As noted in the body of the Order, it should be sufficient if the caller indicates “a date on which the caller could be confident that the consumer could still be reached at that number.”⁷ It should not be necessary for the user to prove that the date indicated was the same one that the called party provided express consent. As long as the caller has a reasonable basis for determining that the consumer could still be reached at that number, this should be sufficient for providing the caller with a safe harbor.

IV. Conclusion

The Commission should modify its rules in the manner proposed by PACE. The Commission should avoid defining regulations that go beyond addressing unwanted calls to consumers by mandating the RND maintain business and toll free numbers. The Commission should modify the safe-harbor provisions to encourage users to query the RND database. These changes are relatively minor in scope, and should be adopted for the initial implementation of the RND.

Respectfully submitted on May 21, 2019,

/Karl Koster/

Karl Koster

Chief IP and Regulatory Counsel

⁷ Order, par. 18.

Noble Systems Corporation
1200 Ashwood Parkway
Atlanta, GA 30338
(404) 851-1331 (x1397)